

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

In RE: Case No: 02-42450-HJB  
JOSEPH L. LAFRANCE Chapter 13  
Debtor

MEMORANDUM IN SUPPORT OF  
MOTION FOR RECONSIDERATION AND  
TO ALLOW LATE FILING OF APPEAL  
ON GROUNDS OF EXCUSABLE NEGLIGENCE  
(Fed. R. Bankr. P. 8002e)

The time for filing a notice of appeal is set forth in Fed. R. Bankr. P. 8002, which requires that the notice of appeal be filed within ten days after the date the order is entered. Fed. R. Bankr. P. 8002(a). Notwithstanding Fed. R. Bankr. P. 8002(e) empowers a bankruptcy court to permit a late filing of a notice of Appeal if the party's failure to comply with an earlier deadline was the result of "excusable neglect".

Francis Lafayette filed a notice of appeal on June 24, 2004, four days past the deadline. On June 30, 2004 the Court entered an order dismissing the appeal as untimely.

Francis Lafayette respectfully requests the Court for reconsideration for the following reasons.

On May 3, 2003 Francis Lafayette was hospitalized at the Wing Memorial Hospital, Palmer, MA with in a critical diabetic condition. This required constant transfusions of insulin. Upon release from the hospital medication was prescribed by Francis Lafayette, attending physical which was suppose to control the diabetic condition. Following the admission Francis Lafayette faithfully took the prescribed medication, however, on June 24, 2004 Francis Lafayette's attending physician doubled the strength

of the diabetic medication, as the original prescription was not sufficient to control Francis Lafayette's diabetic condition. Tiredness or weakness, numbness or tingling in hands or feet and blurred vision are some of the known effects of uncontrolled diabetes. See Attached Exhibit "A".

On June 3, 2004 a second medical doctor gave diagnosis of Francis Lafayette concerning another medical matter as "polyneuropathy" and that this condition causes Francis Lafayette to unable to walk 200 feet without assistance. See Attached Exhibit "B".

To some extend the condition of polyneuropathy becomes worse as the diabetic condition goes out of control. As a result normal tasks such as walking and typing are extremely painful.

During the time period of the entry of the order which was June 10, 2004 to the date of the filing of the appeal June 24, 2004, Francis Lafayette was placed on an incorrect dosage of medication which was not sufficient to override the effects of diabetes. As a result Francis Lafayette was very ill with uncontrolled blood sugar and as a further result of the both illnesses Francis Lafayette did not file the appeal timely.

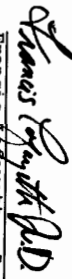
On June 24, 2004 was placed on a higher diabetic medication prescription which according his doctor should bring things more normal.

Francis Lafayette respectfully requests the Court to apply the doctrine of excusable neglect. The Bankruptcy Court should evaluate Francis Lafayette's conduct against several factors, including: (1) whether granting the delay will prejudice the

appeal; (2) the length of the four (4) day delay and its impact on efficient court administration; (3) whether the delay was beyond the reasonable control of the person whose duty it was to perform; (4) whether the person appealing acted in good faith and whether the failure to timely file the appeal resulted from negligence, indifference or culpable conduct.

Francis Lafayette's failure to timely file the appeal resulted from unanticipated illness which an insufficient medication was prescribed.

Respectfully

  
Francis Lafayette, J. D.  
1024 Park Street  
Post Office Box 1020  
Palmer, MA 01069  
(413) 283-7785

Certificate of Service

I, Francis Lafayette certify that I caused a copy of the foregoing pleading to be served upon the parties shown below by mailing a copy of the same, postage prepaid, first class mail to:

Denise M. Pappalardo  
Chapter 13 Trustee  
Denholm Building  
P. O. Box 16607  
Worcester, MA 01601

UNITED STATES TRUSTEE  
446 Main Street  
14th Floor  
WORCESTER, MA 01608

Joseph L. LaFrance  
60 Sayles Street  
Southbridge, MA 01550

  
Francis Lafayette, J. D.



**Wing Memorial**  
Hospital and Medical Centers  
A Member of  
UMass Memorial Health Care

**FOLLOW UP TO YOUR RECENT DIAGNOSTIC TESTS OR RECENT PROCEDURE(S)**

DATE: 6-24-04

PATIENT: Francis Lafayette

MR# \_\_\_\_\_

LAB TEST RESULTS:

X-RAY RESULTS:

MAMMOGRAM:

PAP SMEAR:

Poststate cancer screening test normal  
Diabetes control: not good -  
not not surprising will  
recheck in several months

**BASED ON THIS INFORMATION:**

- ☐ NO FURTHER TESTS ARE REQUIRED AT THIS TIME  
☐ STAY ON YOUR CURRENT MEDICATION  
☐ CHANGE YOUR MEDICATION AS INDICATED: \_\_\_\_\_

- ☐ ARRANGE FOR THE FOLLOWING: \_\_\_\_\_

SINCERELY:

Theresa Jones

MD

**WING MEDICAL CENTER AT:**

- |   |   |
|---|---|
| <input type="checkbox"/> BETHERTOWN, tel. 323-5118 fax: 323-6158        | <input type="checkbox"/> PALMER, tel. 284-5400 fax: 284-5194          |
| <input type="checkbox"/> 20 Daniel Shays Highway, Bethertown, MA 01007  | <input type="checkbox"/> 40 Wright Street, Palmer, MA 01069           |
| <input type="checkbox"/> LUDLOW, tel. 589-0583 fax: 583-5239            | <input type="checkbox"/> WILBRAHAM, tel. 596-3455 fax: 596-2961       |
| <input type="checkbox"/> 34 Hubbard Street, Ludlow, MA 01056            | <input type="checkbox"/> 2344 Boston Road, Wilbraham, MA 01095        |
| <input checked="" type="checkbox"/> MONSON, tel. 267-9101 fax: 267-4606 | <input type="checkbox"/> Griswold Center, tel. 284-5285 fax: 284-5384 |
| <input type="checkbox"/> 2 Main Street, Monson, MA 01057                | <input type="checkbox"/> 40 Wright St., Palmer, MA 01069              |

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750-1014 11/03

01027

**EXHIBIT "A"**

## EXHIBIT "B"

## TO BE COMPLETED BY HEALTH CARE PROVIDER

CLINICAL DIAGNOSIS: degenerative (Required)DURATION (circle one): Temporary Permanent  
If temporary, please state # of months \_\_\_\_\_

PLEASE CHECK ALL THAT APPLY:

☒ Unable to walk 200 feet without assistance (clinical diagnosis MUST be completed)☐ Legally Blind\* (Cert. Of Blindness may substitute for professional certification) (\*automatic loss of license)☐ Chronic Lung DiseasePlease state FEV1 Test results \_\_\_\_\_ O2 saturation with minimal exertion \_\_\_\_\_  
Use of Portable Oxygen? Yes \_\_\_\_\_ No \_\_\_\_\_☐ Cardiovascular Disease

AHA Functional Classification (circle one): I II III IV\*

Arthritis (please state type, severity, and location) \_\_\_\_\_  
(\*automatic loss of license)☐ Loss of or permanent loss of use of a limb  
Description of functional disability \_\_\_\_\_

## HEALTHCARE PROVIDER MUST CHECK ONE:

In my professional opinion and to a reasonable degree of medical certainty:

☒ The above condition, or any other medical condition of which I am aware, **WILL NOT IMPAIR** the safe operation of a motor vehicle.☐ The person applying for this permit is **NOT** medically qualified to operate a motor vehicle safely.  
☐ The medical condition as stated above is of such severity as to require a **COMPETENCY ROAD TEST**.

## CERTIFICATION: (Please Print)

Healthcare Provider: Michael R. Sorrell, M.D.Address: 300 Church Street, Suite 2 Title: \_\_\_\_\_Address: Springfield, Massachusetts 01104Mass Board of Registration, # 06495Healthcare Provider's Signature: [Signature]Date: 6-3-04

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS


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Debtor Chapter 13

MOTION FOR RECONSIDERATION AND  
TO ALLOW LATE FILING OF APPEAL  
ON GROUNDS OF EXCUSABLE NEGLIGENCE  
(Fed. R. Bankr. P. 8002(c))

To the Honorable Henry J. Boroff, U.S. Bankruptcy Judge:

Now comes Francis Lafayette and moves the Court to  
reconsider the ORDER dated June 29, 2004 dismissing the Notice of  
Appeal of the Court's order of June 10, 2004 and to allow the  
filing of appeal late. Filed with this motion is a memorandum in  
support of this motion which sets forth facts sufficient to allow  
a late notice because of excusable neglect pursuant to Fed. R.  
Bankr. P. 8002(c).

Respectfully

  
Francis Lafayette  
BBO# 282960  
Post Office Box 1020  
Palmer, MA 01069  
(413) 283-7785

Certificate of Service

I, Francis Lafayette, J. D., certify that I caused a copy of  
the foregoing motion to be served upon the parties shown below by  
mailing a copy of the same, postage prepaid, first class mail to:

Denise M. Pappalardo  
Chapter 13 Trustee  
Denholm Building  
P. O. Box 16607  
Worcester, MA 01601

UNITED STATES TRUSTEE  
446 Main Street  
14th Floor  
WORCESTER, MA 01608

Joseph L. LaFrance  
60 Sayles Street  
Southbridge, MA 01550

Respectfully

  
Francis Lafayette, J. D.